

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**TRACY ARAKELIAN and DAREN
ARAKELIAN, Individually and as
Parents and Natural Guardians of
C.A., an Infant,**

Plaintiffs,

**No. 08-CV-970
(GLS-DRH)**

v.

**TARGET, TARGET CORPORATION,
NORTHSTAR PARTNERING GROUP,
SUMMIT HEALTH, INC., and
FAVORITE HEALTHCARE STAFFING, INC.,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFFS:

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ELIZABETH J. GROGAN, ESQ.
THOMAS M. WITZ, ESQ.

Gary L. Sharpe
U.S. District Judge

DECISION AND ORDER

This matter is before the court on defendants Target, Target Corporation, Northstar Partnering Group ("Northstar"), Summit Health, Inc. ("Summit"), and Favorite Healthcare Staffing, Inc.'s ("Favorite") motions to dismiss, under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), the complaint filed by plaintiffs Tracy and Daren Arakelian (collectively "the plaintiffs"). Following review of the parties' briefs, the record on the matter, and the relevant law, the court grants the motion filed by Favorite, but denies the motions filed by the other defendants.

DISCUSSION

On this diversity action, the plaintiffs' main contention is that their infant child sustained injuries as a result of defendants' improper administration of an influenza vaccine. However, asserting that plaintiffs have failed to exhaust their administrative remedies under the National Childhood Vaccine Act of 1986 (the "Act"), 42 U.S.C. §§ 300aa-1 to 300aa-34, the defendants have moved to dismiss the plaintiffs' complaint.

Defendants filed their motions to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Thus, the court construes the "complaint liberally, accepting all factual allegations as true, and drawing all reasonable inferences in the plaintiff's favor." See *Liu v. Bureau of Citizenship and Immigration Servs.*, 2009 WL 833349 (2d Cir. 2009) (reviewing a ruling under Rule 12(b)(1)); *Rescuecom Corp. v. Google Inc.*, ___ F.3d ___, 2009 WL 875447 (2d Cir. 2009) (reviewing a ruling under Rule 12(b)(6)). The plaintiffs' complaint, however, "must provide the grounds upon which [their] claim rests through factual allegations sufficient to raise a right to relief above the speculative level." *Gurfein v. Ameritrade, Inc.*, 2009 WL 485062, at *1 (2d Cir. 2009) (citations, quotations, and modification omitted). "A complaint need not detail factual allegations, but it must contain more than 'labels and

conclusions.” *Id.* (citing *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007)).

“The Vaccine Act was enacted by Congress, ostensibly as a federal mechanism beyond the traditional tort law paradigm to provide a trust fund for claimants asserting that they had been harmed through the use of childhood vaccines.” *McDonal v. Abbott Labs.*, 408 F.3d 177, 184 (5th Cir. 2005) (citing *Schafer v. Am. Cyanamid Co.*, 20 F.3d 1, 2 (1st Cir. 1994)).

“Under the Vaccine Act, an individual may not bring a civil action in either state or federal court in excess of \$1,000 in damages arising from a ‘vaccine-related injury or death’ involving the administration of a vaccine unless a petition is first filed with [the] United States Court of Federal Claims.” *Id.* (citing 42 U.S.C. § 300aa-11(a)(2)(A)). “If such a barred civil action is indeed brought, the state or federal court is required to dismiss the action in its entirety.” *Id.* at 184-85 (citing 42 U.S.C. § 300aa-11(a)(2)(B)). However, “[t]he Vaccine Act does not apply to all vaccine-related lawsuits, [it] only [applies to] those brought against a ‘vaccine administrator or manufacturer.’” *Moss v. Merck & Co.*, 381 F.3d 501, 503 (5th Cir. 2004) (citation omitted).

Here, defendants’ main contention is that they are all administrators

under the Act, thus, plaintiffs' action should be dismissed. Plaintiffs concede that Favorite is an administrator under the Act and agree that Favorite's motion should be granted. (Plaintiffs' Brief at p. 4.) Plaintiffs, however, oppose the other defendants' motions contending they are not administrators under the Act.

The definition of administrator is not found in the Act. *Amendola v. Sec'y, Dept. of Health and Human Servs.*, 989 F.2d 1180, 1186 (Fed. Cir. 1993). A few courts, however, have attempted to provide a definition for the term. These courts have indicated that, under the Act, "administrator" is "the one who actually inoculates the individual." *Klahn v. Sec'y of Dept. of Health & Human Servs.*, 31 Fed. Cl. 382, 389 (1994); *Cook v. Children's Med. Group*, 756 So.2d 734, 740 (Miss. 1999). Most recently, in *Crucen ex rel. Vargas v. Leary*, 867 N.Y.S.2d 49 (1st Dep't. 2008), a New York state court defined an administrator as either one who "directly administered covered vaccines or treated plaintiff for injuries that arose shortly thereafter." *Crucen*, 867 N.Y.S.2d at 51.

Here, defendants contend their motions should be granted because the complaint identifies them all as administrators. Defendants also contend the purpose of the Act reflects that they should be considered

administrators and that it is reasonable to treat them as such. However, after reviewing the complaint and the relevant law, the court determines that the complaint lacks detail as to precisely what specific role each of these defendants played in this action. A detailed explanation of the defendants' specific role will certainly aid the court in determining which, if any, of these defendants were "administrators" under the Act. Keeping in mind the limited meaning the courts have applied to the term "administrator" under the Act, this court is not prepared to dismiss the plaintiffs' action. The plaintiffs' claim that defendants are administrators is a subject for discovery. Accordingly, the defendants' motions, with the exception of that filed by Favorite, will be denied.

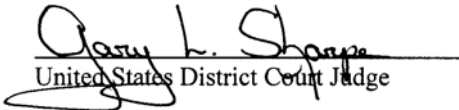
WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Favorite's motion to dismiss is **GRANTED** (Dkt. No. 29) and that the remaining defendants' motions to dismiss (Dkt. Nos. 31, 37, and 40) are **DENIED**; and it is further

ORDERED that the Clerk provide copies of this Order to the parties.

IT IS SO ORDERED.

Albany, New York
Dated: May 7, 2009


United States District Court Judge